

EVA HOLMES ET AL.

IBLA 80-715

Decided November 20, 1980

Appeal from decision of the Utah State Office, Bureau of Land Management, refusing to accept for filing copy of notice of location for the Muse Harris No. 1 lode claim.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Recordation

Under 43 CFR 3833.1-2(d), the owner of unpatented mining claims must tender a filing fee of \$5 per claim when filing recordation information, or BLM properly rejects the filing as unacceptable. Where he submits information on or before the Oct. 22, 1979, deadline, but does not include this fee on or before this date, BLM properly regards this filing as unacceptable, so that the claims became void under 43 CFR 3833.4 when the deadline passed without an acceptable filing.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims Recordation

Where the owner of two mining claims files recordation information for two claims with BLM, but tenders only \$5 as a filing fee, this amount is insufficient to provide the required \$5 fee for both claims, and BLM properly may recognize only one claim as valid. In these circumstances, BLM properly requires the owner to select which claim to validate.

APPEARANCES: Fern Burdick, pro se and for other owners of the Muse Harris (Muse K) Nos. 1 and 2 lode mining claims.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On October 22, 1979, Eva Holmes, et al., 1/ owners of the Muse Harris Nos. 1 and 2 lode mining claims, also known as the Muse K Nos. 1 and 2 claims, filed the following information concerning these claims with the Utah State Office, Bureau of Land Management (BLM): a copy of a document entitled "Proof of Annual Labor" performed on the claims during the assessment year ending on September 1, 1979, the names and addresses of the current owners of the claims, and legal descriptions and maps of the claimed areas. No copies of the original notices of location of the claims were included. A \$5 filing fee accompanied this material.

According to their appeal, claimants had previously attempted to file some information about this case with BLM, but BLM did not accept it because it was incomplete.

Claimants' failure to file copies of the notices of location for these claims apparently confused BLM, which reasonably believed that the material, especially the copy of the proof of labor, was supplemental to previously filed copies of the notices of location of these claims. The filing was accompanied by a \$5 fee, but BLM returned this money to claimants as unnecessary, because it believed that this filing was supplemental, and because no filing fee is required for supplemental filings.

On March 10, 1980, BLM notified claimants that it was unable to find copies of notices of location corresponding to the claims referred to in the information which claimants had filed on October 22, 1979. This was because no such copies were on file, as BLM had rejected claimants' first incomplete submission (whatever it consisted of), and as the subsequent filing did not include them. On May 8, 1980, claimants filed a copy of a notice of location for the "Muse Harris" No. 2 claim, which they have subsequently indicated is the same as the "Muse K" No. 2 claim. Claimants filed a \$5 check with this submission, which BLM accepted as a replacement for the one tendered in October 1979 and which BLM mistakenly sent back at that time. BLM accepted this filing and assigned serial number UMC 215830 to the "Muse Harris" No. 2 claim.

Subsequently, BLM advised claimants verbally that it would regard the material submitted by them prior to the deadline as acceptable. However, BLM advised them that it could not forgive their failure to

1/ The owners of these claims are Fern Burdick, Elva Gardner, Eva Holmes, Irma Lyon, Norma Quinn, and Helen Wilkerson.

submit a \$10 filing fee, \$5 per claim, and that it could recognize only one claim as valid, as only one \$5 fee had been tendered, citing Robert L. Steele, 46 IBLA 80 (1980). BLM gave claimants the choice of which claim to validate, and they chose Muse K/Muse Harris No. 2, but protested the invalidation of No. 1. BLM apparently reiterated its decision to cancel one of the claims, but did not put its decision in writing.

On June 4, 1980, claimants filed what they described as an "appeal" of BLM's verbal decision. They protested BLM's refusal to recognize the Muse K/Muse Harris No. 1 claim as valid and filed another \$5 in an effort to overcome BLM's objection to their failure to have paid this fee in October 1979. We have misgivings about recognizing this letter as an appeal, as there is no written decision in the record setting out the basis for BLM's action. However, we note that here is a memorandum by a BLM employee setting out the background of the dispute and indicating that BLM's action concerning the No. 1 claim is final. Accordingly, we will consider the matter in order to avoid the delay attendant upon dismissing the appeal, allowing BLM to issue a written decision, and requiring claimants to file another appeal.

[1] BLM properly advised claimants that only one of these claims is valid. Under 43 CFR 3833.1-2(d) "[e]ach claim * * * filed shall be accompanied by a one time \$5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner." Claimants tendered only \$ 5 on or before October 22, 1979, the deadline under 43 CFR 3833.1-2 for recordation of unpatented mining claims. Where the owner of unpatented mining claims fails to tender a recording fee of \$5 per claim on or before this deadline, the claim is invalid. Robert L. Steele, *supra*. This is because the filing of information without the fee was unacceptable (under CFR 3833.1-2(d)) and because the claims became void (under 43 CFR 3833.4) when the October 22, 1979, deadline passed without an acceptable filing.

Where, as here, the owner has tendered one payment with a multiple filing concerning two or more claims, and where the payment is insufficient to provide \$5 per claim, BLM properly recognizes as valid only that number of claims for which this payment provides service fees in full. Robert L. Steele, *supra*. For example, where a claimant files information concerning 10 claims, but submits a payment of only \$5, BLM may properly recognize only one of these 10 as valid, as the payment provides a service fee for only one.

Claimants allege in their appeal that BLM misinformed them that they needed to send only \$5, but offer no details of how they were misinformed or corroborating evidence. Accordingly, we are unable to conclude that BLM was responsible for their failure to pay an adequate filing fee for two claims. It is equally possible that claimants simply misunderstood that the required fee was \$5 per claim.

Claimants argue that, as BLM has allowed them to submit the \$5 filing fee for one of the claims untimely, it should also accept its most recent submission of \$5 for the other claim. It is true that BLM accepted a \$5 fee in May 1980, well after the October 22, 1979, deadline. However, by so doing, BLM was only correcting its previous mistaken decision to return the \$5 tendered timely along with the proof of labor, etc., in October 1979. Claimants are entitled to credit only for the amount of money tendered before the deadline, that is, \$5, and any deficiency in that amount may not be made up after the deadline. Robert L. Steele, supra. Accordingly, BLM properly refused to accept the most recent \$5 payment which claimants submitted with their appeal. This check will be returned to them.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

